to be an attempt. Each case must be decided on its own facts. In the principal case the court would not have been warranted in reversing the finding of this fact in the court below. *Cf. Bissot* v. *State*, 53 Ind. 408. But *cf. People* v. *Hüter*, *supra*.

INDICTMENT — FINDING — RESUBMISSION. — Though retained by the prosecutor, the acting state attorney had charge of the proceedings in which a grand jury indicted the defendant for murder. On demurrer to a plea in abatement, the court quashed the indictment. Under a competent state attorney, the same grand jury, having heard the same witnesses only, found the same indictment. A demurrer to a plea in abatement was sustained. The defendant was convicted of manslaughter. *Held*, that the judgment be affirmed. *Oglesby* v. *State*, 90 So. 825 (Fla.).

The Florida Constitution guarantees a right to a grand jury in felony cases. See FLA. CONST., ART. I, § 10. Statute and common law determine the content of that right. *English* v. *State*, 31 Fla. 340, 12 So. 689. At common law bias is no ground of objection to a grand juror, who may act on his own or common knowledge. *Regina* v. *Russell*, Car. & M. 247; *Comm.* v. *Woodward*, 157 Mass. 516. See MIKELL, CASES ON CRIMINAL PROCEDURE, 90 n. See also, 4 BLACK. COMM. 300; Sir Frederick Pollock, "The King's Peace in the Middle Ages," 13 HARV. L. REV., 177, 180–181; James B. Thayer, "The Jury and Its Development," 5 HARV. L. REV. 249, 263. *Contra*, *United States* v. *Burr*, Fed. Cas. No. 14,693 (D. Va.). A Florida statute declares the common law rule. See 1920 FLA. REV. GEN. STAT., §§ 5947, 5954. *Peeples* v. *State*, 46 Fla. 101,35 So. 232. At common law, however, private control of a grand jury invalidates its action. *United States* v. *Kilpatrick*, 16 Fed. 765 (W. D. N. C.); *Welch* v. *State*, 68 Miss. 34, 8 So. 673. See Mr. Justice Field, *Charge to Grand Jury*, 2 Saw. 667, 673 (Circ. Ct. D. Cal.). In a doubtful situation this consideration would have great weight. The jury in returning the second indictment cannot have discounted entirely the influences that produced the first. *Cf. State* v. *Osborne*, 61 Ia. 330, 16 N. W. 201; *State* v. *Ivey*, 100 N. C. 539, 5 S. E. 407. Nevertheless, it would seem, under the circumstances, that the court preserved the substantial features of a grand jury indictment. The evidence amply sustained the conviction, and, *a fortiori*, the indictment. No improper conduct on the part of the first attorney was shown aside from his performance without right of the function of a prosecuting attorney. A competent attorney supervised and presumably approved the later proceedings. The lower court seems clearly justified in refusing, in the exercise of its discretion, a new trial.

INJUNCTION — NATURE AND SCOPE OF THE REMEDY — DISCRETION OF THE COURT TO REFUSE RELIEF ON GROUNDS OF CONVENIENCE. — The defendant railroad appealed from a ruling denying its motion for dissolution of an injunction restraining it from appropriating part of a shipper's coal, to keep its trains running during a coal strike. The plaintiff was a coal merchant. The defendant offered to pay him the invoice price of coal at the mines, plus ten per cent, for its appropriation. It was alleged that further appropriations would not be necessary for some months, at least. *Held*, that the appeal be denied. *Mobile & Ohio R. R. Co.* v. *Zimmern*, 89 So. 475, 206 Ala. 37.

For a discussion of the principles involved, see NOTES, *supra*, p. 211.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — DATE OF INCONTESTABILITY CLAUSE. — The insured took out a policy of life insurance with the defendant company. The policy was antedated, in

accordance with the insured's request, so as to read as of Aug. 23, 1915, although actual delivery was not made until Sept. 13, 1915. The policy provided that it should be incontestable after two years from its date of issue. The insured died July 4, 1917. The policy was not contested until Aug. 24, 1917, when the defendant sought to interpose a plea of fraud. On these facts the parties both requested a directed verdict. The court directed a verdict for the plaintiff beneficiary and entered judgment thereon. *Held*, that the judgment be affirmed. *Mutual Life Ins. Co.* v. *Hurni Packing Co.*, 280 Fed. 18 (8th Circ.).

An incontestability clause which fixes a reasonable period for the insurer to discover defenses is effective even as against fraud. *Weil* v. *Federal Life Ins. Co.*, 264 Ill. 425, 106 N. E. 246. The principal case concerns a question of construction of such a clause reading "two years . . . from its date of issue." There is some authority to the effect that the death of the insured within two years fixes the rights of the parties, so that the insurance company will not be barred from asserting its defense. *Kelley* v. *Mutual Life Ins. Co. of N. Y.*, 109 Fed. 56 (S. D. Iowa), reversed on other grounds, 114 Fed. 268 (8th Circ.). But the great weight of authority is otherwise. *Monahan* v. *Metropolitan Life Ins. Co.*, 283 Ill. 136, 119 N. E. 68; *Lavelle* v. *Metropolitan Life Ins. Co.*, 238 S. W. 504 (Mo.). The question is, then, narrowed to a construction of the phrase "date of issue," to determine the exact day on which the incontestability period started to run. Literally, the dissenting opinion would seem correct, that the meaning of "issue" is delivery. But the word must be considered with reference to the whole policy, and doubtful questions of construction should be determined against the insurance company which drew up the policy, particularly where the clause purports to be for the benefit of the insured. *Monahan* v. *Metropolitan Life Ins. Co.*, *supra*. See 2 WILLISTON, CONTRACTS, § 621. The court in the principal case is in accord with the trend of authority in construing "date of issue" to mean the date on the face of the policy. *Anderson* v. *Mutual Life Ins. Co.*, 164 Cal. 712, 130 Pac. 726; *Harrington* v. *Mutual Life Ins. Co. of N. Y.*, 21 N. D. 447, 131 N. W. 246; *Meridian Life Ins. Co.* v. *Milam*, 172 Ky. 75, 188 S. W. 879. See *Goldstein* v. *New York Life Ins. Co.*, 176 App. Div. 813, 816, 162 N. Y. Supp. 1088, 1090; aff'd, 227 N. Y. 575, 124 N. E. 898. *Cf. Painter* v. *Mass. Mut. Life Ins. Co.*, 133 N. E. 20 (Ind.); *Allen* v. *Patrons' Mutual Fire Ins. Co. of Mich., Ltd.*, 165 Mich. 18, 130 N. W. 196.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORM. — An automobile liability policy provided that the insurer should "pay all costs and expenses incident to the investigation, adjustment and settlement of claims, and all costs taxed against the assured in any legal proceedings defended by the company." A man was run over and killed. His administrator sued and attached property of the insured, a foreign corporation. The insurance company having refused to bond the attachment, the insured did so and thus secured a partial discharge. The action was later settled and this action was brought to recover the expense of poundage fees and procuring a bond. *Held*, that the plaintiff do not recover. *Green River Distilling Co.* v. *Massachusetts Bonding & Insurance Co.*, 234 N. Y. 109, 136 N. E. 310.

Insurance policies should be construed liberally to promote the purpose of the insurance. *Richards* v. *Standard, etc. Co.*, 200 Pac. 1017 (Utah). It has been thought that reasonable construction, in favor of the insured, promotes this end. *Rochester, etc. Co.* v. *Maryland Casualty Co.*, 143 Mo. App. 555, 128 S. W. 204. The New York court has accepted the proposition that a provision such as that under consideration is to apply to